

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.6313 of 2016
Date of decision: 23.08.2016**

Dr. Roshan Lal

.....Petitioner

Vs.

Union of India and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: Mr.S.S.Pathania, Advocate for the petitioner.

Ajay Kumar Mittal,J.

1. Through the instant writ petition under Articles 226/227 of the Constitution of India, the petitioner prays for quashing the orders dated 27.5.2014 and 2.9.2015, Annexures P.1 and P.2 respectively passed by the Central Administrative Tribunal, Chandigarh Bench (CAT) whereby his claim for retention of lien with the respondent department was rejected.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. After doing M.A.in Psychology and M.Phil, the petitioner was selected for the post of Lecturer in Psychology by the Haryana Public Service Commission. He joined the said post on 2.4.1990 in the department of Education. The petitioner while serving in Government College, Kalka applied through proper channel for the post of Lecturer in Psychology in the department of education Chandigarh in pursuance to an advertisement for the post by Union Public Service Commission (UPSC) and got selected. Prior to joining the post, the

petitioner requested for pay and grade protection. The respondents informed the petitioner that he would be granted minimum of scale plus increments, if due and further pay protection will be considered after joining, if rules permitted. The petitioner was drawing Rs.11,300/- per month in the scale of 10000-375-15200 before joining the service with the respondents. Consequent to the assurance given by the respondent administration, the petitioner joined the post of Lecturer in Psychology with the respondent Administration on 31.7.2001. The respondents asked the petitioner for supply of service book/LPC etc. vide letter dated 26.12.2002. After receiving the said documents, the respondents fixed the pay as Rs.11300/- in the pay scale of Rs.8000-13500 vide order dated 19.8.2004. According to the petitioner, the pay was wrongly fixed as the past service was not counted towards the grant of scale as per UGC guidelines. Aggrieved thereby, the petitioner filed an application before the Tribunal which was decided in his favour. The respondents filed CWP No.2360 of 2013 in this court against the said decision which is pending adjudication. However, senior/selection grade had been granted to the petitioner subject to the outcome of the writ petition. The petitioner completed the probation period and was granted two increments on account of having acquired Ph.D degree w.e.f 7.6.2008 vide order dated 14.5.2009. In pursuance to an advertisement for the post of Assistant Professor in Psychology by Panjab University, Chandigarh, the petitioner applied for the post through proper channel vide application dated 25.1.2012 which was forwarded by respondent No.3 assuring that in case of his selection to the post applied for, his lien will be retained as per rules. The petitioner was selected and appointment letter dated 26.2.2013 was issued to him. The offer of appointment to join within 30 days from the issue of appointment letter was subject to the outcome of CWP No.17501 of 2011.

The probation period was of one year. The petitioner submitted an application dated 27.2.2013, Annexure A.8 to respondent No.3 for relieving him and for retention of his lien on the present post. Respondent No.2 passed the impugned order dated 26.3.2013, Annexure A.1 intimating the petitioner to tender the resignation before joining the new post and no lien would be retained. Aggrieved thereby, the petitioner filed an application before the Tribunal. However, on the request made by the petitioner dated 19.3.2013, the joining time was extended upto 15.5.2013 vide letter dated 5.4.2013, Annexure A.10 and vide interim order dated 8.5.2013 passed by the Tribunal, the petitioner was allowed to join the new post without tendering his resignation. Upon notice, reply was filed by respondent Nos. 1 to 3 in which stand taken by the respondents for denial of lien on the post and asking for resignation was that as per advice of the Additional Secretary Personnel, Chandigarh Administration, since Guru Ghasidas University, Bilaspur, Chattisgarh was not within the ambit of Rule 3.12 of the Punjab Civil Services Rules Volume I Part 1 being neither a department nor under the control of the Chandigarh Administration. According to the petitioner, the Tribunal did not take into consideration two orders dated 17.12.2008 and 5.10.2011 passed by the respondents on identical issue of lien. The Tribunal dismissed the application vide impugned order dated 27.5.2014, Annexure P.1. The review petition filed by the petitioner also met with the same fate vide order dated 2.9.2015, Annexure P.2. The petitioner also cited identical cases i.e. Annexures RA3, RA5, RA6, RA8, RA10 and RA 11 in support of his claim. Hence the instant writ petition by the petitioner.

3. We have heard learned counsel for the petitioner.

4. The relevant statutory rules relating to lien read thus:-

“2.35. Lien means the right or title of a government employee to hold a

regular post whether permanent or temporary, either immediately or on the termination of a period of age and subsequently entertaining a grievance that they are not allowed to continue in service till they earn the full pension. If in any case, therefore, the Head of department should desire to make an exception to the age limit, the recruitment should be made aware at the time of recruitment of the fact that he is unlikely to be able to earn full pension.”

The meaning of ‘lien’ has been described under this rule.

3.12. (1) A Government employee confirmed on a post acquires a lien on that post. If such a Government employee is appointed by direct recruitment or by transfer in another department or in a different cadre in the same department, as the case may be, he shall give an option to acquire the lien on the post, presently held by him within a period of six months after the completion of his probation period and on exercise of such an option, he shall cease to hold the lien on the post in the parent cadre or department, as the case may be, from the date he is confirmed against the post presently held by him. If such an option is not exercised by him within the aforesaid stipulated period, he shall be reverted back to the present cadre or department, as the case may be.

(2) In the case of a temporary government employee, who is appointed by direct recruitment or by transfer in another department or in a different cadre in the same department, he shall not be allowed to retain any lien on the post held prior to this his new appointment after the expiry of a period of two years from the date of his joining against the new post.

Note: If a Government employee, who is confirmed against a post in a department, has been appointed by direct recruitment or by transfer in another department or in a different cadre in the same department and has also completed his probation

period but has not been confirmed on the new post upto the date of publication of the Punjab Civil Services Rules (first Amendment) Rules, Volume I Part I, 1997, the Official Gazette, he shall give an option to acquire lien on the post presently held by him within a period of six months from the date of publication of the said rules. If such an option is not exercised by him within the aforesaid stipulated period, he shall cease to hold the lien on the post in the parent cadre or post or department, as the case may be, from the date he is confirmed against the new post presently held by him.

3.15. A government employee's lien on post shall, in no circumstances, be terminated even with his consent, if the result will be to leave him without a lien on any post.”

These rules enumerate the circumstances under which an employee acquires a ‘lien’ on the post.

5. It is the admitted position that the petitioner was selected for the post of Lecturer in Psychology by the Haryana Public Service commission and joined the department of Education on 2.4.1990. Thereafter, in response to the advertisement issued by UPSC for appointment of lecturer in Psychology in the department of education, the petitioner was selected vide letter dated 30.5.2001. He was confirmed vide order dated 5.4.2005. Thereafter, the petitioner being eligible applied in response to an advertisement issued by Punjab University for filling up the post of Assistant Professor in Psychology. He was selected vide letter dated 26.2.2013. The petitioner submitted an application to respondent No.3 for relieving him and to retain his lien on the post. Vide order dated 26.3.2013, passed by respondent No.2, the petitioner was informed that there was no provision under the Service rules applicable to UT employees to retain lien on the post, if they were appointed on an ex cadre post. It was pleaded by the

respondents before the Tribunal that as per Rule 3.12 of the Punjab Civil Services Rules Volume I Part I, if a person was appointed in a department other than the department of UT Chandigarh then he could not retain his lien. It has been categorically recorded by the Tribunal that lien connotes right of a civil servant to hold the post substantively to which he is appointed. It is an incident of substantive appointment to a post. It is basically a similar concept since in a public service substantive appointment is made against a particular post. It was further recorded that the claim of the petitioner could not be accepted on the ground that Rule 3.12 of the Rules provided that a lien could be retained if an employee was appointed in another department or in a different cadre in the same department. The said rule did not allow an employee, who was appointed outside the Chandigarh Administration, to retain his lien with the Chandigarh Administration. The Panjab University being the creature of the Panjab University Act did not come within the definition of Chandigarh Administration. The relevant findings recorded by the Tribunal read thus:-

“8. Lien connotes right of a civil servant to hold the post substantively to which he is appointed. It is an incident of substantive appointment to a post. It is basically a similar concept since in a public service substantive appointment is made against a particular post. For better appreciation of the controversy the Rules applicable for retention of the lien with the Administration needs to be reproduced as under:-

‘3.12(1) A Government employee confirmed on a post acquires a lien on that post. If such a Government employee is appointed by direct recruitment or by transfer in another department or in a different cadre in the same department, as the case may be, he shall give an option to acquire the lien on the post, presently held by him within a period of six months after the completion of his probation period and on exercise of such an option, he shall cease to hold the lien on the post in the parent cadre or department, as the case may be, from the date he is

confirmed against the post presently held by him. If such an option is not exercised by him within the aforesaid stipulated period, he shall be reverted back to the present cadre or department, as the case may be.’

A perusal of the above makes it clear that a government servant confirmed on a post acquires a lien on that post. If such a Government employee is appointed by direct recruitment or by transfer in another department or in a different cadre in the same department, he shall give an option to acquire the lien in that post, that too within a period of six months after completion of his probation period, therefore, makes it clear that if an employee is permanently appointed and confirmed acquires a lien on the post, if he is appointed to another post in the same department till he acquires the lien on the subsequent post. Rule 3.15 also makes it clear that lien on the post shall in no circumstances be terminated even with his consent. The same being relevant is reproduced as under:-

“3.15. A government employee’s lien on post shall, in no circumstances, be terminated even with his consent, if the result will be to leave him without a lien on any post.”

9. A perusal of the above extraction also indicates that there is no ambiguity in the Rules and the submission made by the learned counsel for the applicant that though he had been appointed with the Panjab University, which is an independent and autonomous body, his lien be kept intact with the UT Administration cannot be accepted for the simple reason that Rule 3.12 of the Rules mandates that a lien can be retained if an employee is appointed in another department or in a different cadre in the same department. Rule 2.19 of the Rules defines the Department of Finance as the Department of Finance of the Panjab Government. As explained by the respondents, the term “department” does not include the Panjab University. The “department” means the “department of UT Administration”. This has also been clarified by the respondents vide their letter dated 8.1.2013. Therefore, the applicant has no case. The learned counsel for the applicant is trying to misconstrue the

Rules. The Hon'ble Supreme Court in ***State of Jharkhand vs. Govind Singh***, (2005) 10 SCC 437 held as under:-

“10. When the words of a statute are clear, plain or unambiguous, i.e. they are reasonably susceptible to any one meaning, the courts are bound to give effect to that meaning irrespective of consequences. The intention of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said (See ***J.P.Bansal vs.State of Rajasthan*** (2003) 5 SCC 134).

11. As a consequence, as construction which requires for its support addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As was noted by the Privy Council in ***Crawford vs Spooner*** (1846) 6 Moore PC1:

“We cannot aid the Legislature's defective phrasing of an Act, we cannot add or mend and, by construction make up deficiencies which are left there”.

The view was reiterated by this Court in ***State of Madhya Pradesh vs. G.S.Dall and Flour Mills*** (AIR 1991 SC 772 and ***State of Gujarat vs. Dilipbhai Nathjibhai Patel*** (JT 1998(2) SC 253). Speaking briefly the court cannot reframe the legislation, as noted in ***J.P.Bansal's*** case (supra), for the very good reason that it has no power to legislate.

12. It is said that a statute is an edict of the legislature. The elementary principle of interpreting or construing a statute is to gather the mens or sentential legis of the legislature.

13. Interpretation postulates the search for the true meaning of the words used in the statute as a medium of expression to communicate a particular thought. The task is not easy as the “language” is often misunderstood even in ordinary conversation or correspondence. The tragedy is that although in the matter of correspondence or conversation, the person who has spoken the words or used the language can be approached

for clarification, the legislature cannot be approached as the legislature, after enacting a law or Act, becomes *functus officio* so far as that particular Act is concerned and it cannot itself interpret it. No doubt, the legislature retains the power to amend or repeal the law so made and can also declare its meaning, but that can be done only by making another law or statute after undertaking the whole process of law making.

10. As discussed above, the Rules do not admit of any ambiguity and have to be read and interpreted to advance the purpose for which these have been framed. The rules cannot be read in the manner suggested by the learned counsel for the applicant. The “department” means the “department of UT Administration”. Even otherwise merely while forwarding the application of the applicant to the Panjab University, a recommendation has been made that he will acquire lien as per service rules does not compel the respondents to act contrary to Rules. Moreover, it suggests that the Chandigarh Administration have submitted therein that this lien will be retained as per the Rules. As stated above, Rule 3.12 does not allow an employee who is appointed outside the Chandigarh Administration his lien with the Chandigarh Administration. Even otherwise, the Panjab University being the creature of the Panjab University Act does not come within the definition of Chandigarh Administration. Therefore, the contention of the applicant that Panjab University is part of Chandigarh Administration cannot be accepted....”

6. Learned counsel for the petitioner besides assailing the order of the CAT submitted that similar cases have been accepted by the Chandigarh Administration where after joining the new post, lien was retained with the Chandigarh Administration.

7. A perusal of the order passed by the Tribunal shows that no such point claiming parity as sought to be argued before this Court was urged by the petitioner before the Tribunal. Even otherwise, learned counsel

with reference to Annexures RA-3 to RA6, RA8, RA10 and RA11 could not demonstrate that the cases considered therein were identically placed as in the case of the petitioner. From bare reading of these annexures, it is evident that the factual matrix in those cases was different and, therefore, no benefit can be derived by the petitioner therefrom. Further, learned counsel for the petitioner has not been able to controvert the findings recorded by the Tribunal warranting interference by this Court under Articles 226/227 of the Constitution of India. Consequently, finding no merit in the petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

August 23, 2016
‘gs’

(Ramendra Jain)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes